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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,812	11/16/2001	John J. Kilper	ALVY 7552US	8522
1688	7590	12/19/2003	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 763 SOUTH NEW BALLAS ROAD ST. LOUIS, MO 63141-8750			RIDLEY, RICHARD	
			ART UNIT	PAPER NUMBER

3651

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/993,812

Applicant(s)

KILPER ET AL.

Examiner

Richard Ridley

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-9 is/are allowed.
- 6) ☒ Claim(s) 1 and 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3651

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to provide proper antecedent basis for the term “dummy sensor”.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase “dummy sensor” was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3651

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiesser et

al. '225. Schiesser discloses a similar accumulation device comprising a(n):

➤ First plurality of zones (fig. 16A), the zones capable of being separately driven (C7/L65-

C8/L1), each zone comprising a(n):

- Sensor (42 or 12) for sensing the presence of a carton within the zone;
- Actuator that allows movement of the sensor between an up position (fig. 17 & 18) wherein the sensor is capable of contacting the cartons and a down position (fig. 19) wherein the sensor is not capable of contacting the cartons;

wherein the actuator of at least one of the zones comprises means (7, 8) for providing a signal to an adjacent, upstream zone to begin conveying cartons only when the sensor with the at least one zone senses the absence of a carton with that zone when the conveyor switches from an accumulation mode to a transportation mode(C10/L22-55).

Regarding claims 10, 11, Schiesser further discloses the steps of:

➤ Holding the sensor in a down position when the sensor is not capable of contacting a carton at least 1) when the conveyor is not accumulating cartons (fig. 19 shows a conveyor mode and which is not an accumulation mode) and 2) when the conveyor is accumulating cartons and an adjacent, downstream sensor does not sense the presence of a carton with the downstream, adjacent zone (C10/L45-51; C1/L54-55);

Art Unit: 3651

- Holding the sensor in an up position where the sensor is capable of contacting a carton only when the conveyor is accumulating cartons and an adjacent, downstream sensor senses the presence of a carton within the downstream, adjacent zone (C10/L7-11; fig. 17 & 18).
- Switching a zone from a accumulation mode to a transportation mode only when an adjacent, downstream zone does not sense the presence of a carton within the adjacent, downstream zone (C1/L40-44; C10/L29-40)

***Allowable Subject Matter***

6. Claims 2-9, 13, 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 2, the prior art of record does not disclose the claimed combination wherein comprising an actuator that comprises a first and second pistons disposed within a cylinder housing wherein the first piston comprises a stem and a bore, the stem being capable of operating the sensor of the same zone and the bore being capable of receiving a stem of the second piston.

Regarding claims 7, the prior art of record does not disclose the claimed combination wherein comprising a dummy actuator disposed within a second plurality of zones that allows

Art Unit: 3651

movement of the sensor between an up position wherein the sensor is capable of contacting the cartons and a down position wherein the sensor is not capable of contacting the cartons. Reading the claims in light of the specification, the examiner has derived meaning for the phrase “dummy actuator” as given by the specification on page 13, line 3-8, where “dummy actuator” has been differentiated from “actuator” in that the dummy actuator has an air inlet located such that the second piston does not block the air inlet when in the third mode.

Regarding claim 12, the case that the phrase “dummy sensor” associates a sensor with a “dummy actuator” as define by the specification, the prior art of record does not disclose the claimed combination wherein comprising a dummy sensor disposed within each of a second plurality of zones.

### ***Response to Arguments***

9. Applicant's arguments filed on 15 October 2003 have been fully considered but they are not persuasive.

The applicant argues that Schiesser does not disclose a “means for” performing corresponding to the structural elements recited in the specification and equivalents thereof.

In response that examiner notes that claim 1 recites a “means for providing a signal to an adjacent, upstream zone to begin conveying cartons only when the sensor with the at least one zone senses the absence of a carton with that zone...”. The means for providing a signal from one zone to another has been given by the specification as the presence (or lack thereof) of compressed air. Schiesser discloses a means (7, 8) for providing a signal to an adjacent,

Art Unit: 3651

upstream zone to begin conveying cartons only when the sensor with the at least one zone senses the absence of a carton with that zone.

### ***Conclusion***

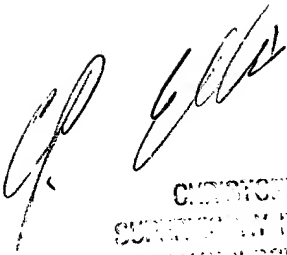
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Ridley whose telephone number is (703) 306-5910. The examiner can normally be reached on Mon-Thur 7:00 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Art Unit: 3651



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TECHNOLOGY CENTER



Richard Ridley  
20 Oct 2003

Richard Ridley  
Examiner  
Art Unit 3651